

**HIGH COURT OF TRIPURA
AGARTALA**

MAC.App 89 of 2023

The Oriental Insurance Company Ltd.

A Company Registered Under the Companies Act 1956

Represented by its Assistant Manager, Agartala, Division Office,

H.G.B. Road, (Near Sarkar Nursing Home) Agartala West Tripura.

---Appellant(s)

Versus

1. **Smt. Aparna Nath,**
W/o- Manoranjan Nath
2. **Smt. Sushmita Das (Nath) @ Susmita,**
W/o- Lt. Mandip nath,
3. **Sri Imon Nath (minor)**
S/o-Lt. Manidip Nath
(Being represented by his mother Smt. Sushmita Das (Nath) @ Sushmita)
[All are the residents of village-North Ganganagar, PO: Ganganagar, PS- Dharmanagar,
District-North Tripura]

---Claimant/Respondent(s)

4. **Sri Niranjana Debnath**
S/o-Lt. Indra Bhusan Debnath
Resident of Village-Dalura
PS- Khayerpur, District- West Tripura
(Owner and Driver of Vehicle Bearing Registration No.TR-01-B-3028, (Maxx))

---Respondent(s)

For Appellant(s)	:	Mr. B.Majumder, Advocate.
For Respondent(s)	:	Mr. S. Bhattacharjee, Advocate.
		Mr. S. Noatia, Advocate.
Date of hearing and date of judgment and order	:	22.07.2024
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard Mr. B. Majumder, learned counsel for the appellant also heard Mr. S. Bhattacharjee, learned counsel for the respondents.

[2] This is an appeal under Section 173 of the Motor Vehicles Act, 1988, along with its up to date amendments against the impugned judgment and award dated

17.03.2023 passed by the Ld. Member, Motor Accident Claims Tribunal, North Tripura, Dharmanagar rendering in case No. TS(MAC) 30 of 2017 accordingly.

[3] The appellant has prayed for the following reliefs:

- (i) *Admit this appeal;*
- (ii) *Issue notice upon the respondents;*
- (iii) *Call for records of the case from the Motor Accident Claims Tribunal, North Tripura, Dharmanagar in case No.TS (MAC) 30 of 2017.*
- (iv) *Stay the operation of the impugned judgment and award dated 17.03.2023 passed by the Ld. Member Motor Accident Claims Tribunal, North Tripura, Dharmanagar in Case No. TS (MAC) 30 of 2017.*
- (v) *After hearing the parties at length, be pleased enough to dismiss/set aside/ quash the impugned judgment and award dated 17.03.2023 passed by the Ld. Member, Motor Accident Claims Tribunal, North Tripura, Dharmanagar in case No.T.S. (MAC) 30 of 2017*
- (vi) *And/or pass any other appropriate order/orders, direction/directions as your lordship may deem fit and proper.*

[4] The fact of the case is that on 14-07-2017 at about 07.00 /08.00 am Manidip Nath (now deceased) was coming at his resident at North Ganganagar, Dharmanagar through vehicle bearing registration No. TR-01B- 3028(Maxx) along with other passengers through Assam Agartala Road and when the vehicle reached at Sidongcherra under Pecharthal Police Station, the driver of the vehicle lost control and the vehicle rolled down to a ditch about 200-250 feet. As a result Manidip Nath died on the spot and other passengers sustained severe injuries. The accident occurred due to rash and negligent driving of the driver of the vehicle. It is also stated that deceased Manidip Nath was aged about 30 years and he was a Helper Mechanical (C & W) posted at Agartala Railway Station.

[5] The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

“17. In view of the above discussion and findings, the application under Section 166 of the Motor Vehicles Act, 1988 filed by the claimant-petitioners is allowed on contest.

The Opposite Party No. 2, The Branch Manager, Oriental Insurance Company Ltd. Dharmanagar Branch, Dharmanagar, North Tripura shall pay the compensation of Rs.56,17,136/- (Rupees fifty six lakh seventeen thousand one hundred thirty six) only to the claimant- petitioners within a period of 30 days from this day of award. This award of compensation shall carry interest at the

rate of 5% per annum from the date of presentation of the claim petition before this Tribunal i.e. 09-11- 2017 till the realization.

The share of the claimant-petitioner no.2, Smt. Sushmita Das (Nath) @ Susmita being the wife of the deceased will be (Rs.18,59,045/- + Rs.40,000/-) = Rs.18,99,045/- (Rupees eighteen lakh ninety nine thousand forty five) only with accrued interest.

The share of the claimant-petitioners no. 1 and 3 namely Smt. Aparna Nath and Sri Imon Nath will be Rs.18,59,045/- (Rupees eighteen lakh fifty nine thousand forty five) only each with accrued interest.

18. Keeping in mind the guidelines of Hon'ble Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandam Vs. Ms. Sushama Thomas and others (AIR 1994 SC 1631) and the guidelines as laid down in Union Carbide Corporations case (1991) 4 SCC 584 and subsequent decision of the Hon'ble High Court of Tripura in case no. MAC Application 36 of 2006 Joydeep Chakraborty Vs. Pintu Sharma and another passed by the Hon'ble Chief Justice Deepak Gupta, since the claimant petitioner no.2 is a minor, it is ordered that the share of the minor namely Master Imon Nath together with interest shall be fixed in a long tern fixed deposit scheme till he attains his majority in his name in any Nationalized Bank making his natural guardian mother namely Smt. Sushmita Das (Nath) @ Susmita as his nominee. No loan or other advances in any form shall be allowed on such fixed certificate without the express permission of this tribunal.

Since the claimant-petitioners no. 1 and 2 are women, they may not be properly handle with the compensation money, it is ordered that 50% of the share of each of the claimant-petitioners no. 1 and 2 together with interest shall be fixed in a long tern fixed deposit scheme at least for a period of six years in their names in any Nationalized Bank giving a scope to them to draw the monthly interests accrued on it. No loan or other advances in any form shall be allowed on such fixed certificates without the express permission of this tribunal.

Rest 50% of the share of the claimant-petitioners no. 1 and 2 together with interest shall be released in favour of them by transmitting it directly to their savings bank accounts to allow them to meet the expenditure of their livelihood which they might have incurred for the death of the deceased."

[6] Being aggrieved by and dissatisfied with the judgment and award dated 17.03.2023 passed in case No. TS(MAC) 30 of 2017 by the Ld. Member, Motor Accident Claims Tribunal, North Tripura, Dharmanagar, the present appeal has been preferred by the appellant-insurance company.

[7] On the other hand, Mr. S. Bhattacharjee, learned counsel appearing for the claimant-respondents contended before this court that the impugned order passed by the learned tribunal below is just and proper and needs no interference from this Court and further prayed to dismiss the appeal.

[8] The orders passed by the tribunal according to this Court is just and proper as the quantum is decided based on the income which is supported by the evidence and

relying Sarala Verma case and PranaySethi case. Thus, the present case needs no interference.

[9] It is seen from the record that despite giving adequate opportunity there was no representation from insurance company officials for entering into the witness box (dock) and to depose before the tribunal. The insurance company officials are expected to appear before court in all matters where public money is involved and to assist court in the light of the settled principles of law by the Hon'ble Supreme Court of India. No doubt, the compensation that would be awarded is for beneficiaries under the beneficial legislation. But keeping in view the unprofessional act committed by the insurance company officials, the compensation should be paid by the concerned officials of the insurance company. At this juncture, they cannot move away from their responsibility burdening the policy holders by enhancing the premium on year to year basis and disbursing huge amounts of compensation to the claimants at large and drive insurance company to face loss. This act of the insurance company officials is held responsible for draining away the public money by not performing their duty diligently and also not attending the court proceedings to assist judiciary when it is mostly required to ventilate the true facts of the case as per their records.

[10] Hence, this court finds fault with the action of the officials of insurance company for not appearing before the respective court and lead evidence which is their part of duty for which they are drawing huge salary and other incentives. For their inaction, the insurance company cannot be burdened to pay the compensation. It is high time that is seen that but for non-cooperation of the officers of the insurance company on the material available the cases are being decided. This court is of the opinion that the insurance company cannot be fastened with the liability of paying the compensation for the negligence of its erred officers. Hence, liability is fastened on all the erred officers of the insurance company who are directly or indirectly involved with the present case and

